

DATE: November 30, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-02565
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**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Applicant's 20-year history of financial problems generates a financial considerations security concern. These problems stemmed from layoffs, health crises, and other circumstances beyond his control rather than from any financial irresponsibility. Most recently, Applicant has begun rehabilitating his finances by attending financial counseling, consolidating his debts into a payment plan, and obtaining a part-time job. Applicant has mitigated the security concern. Clearance is granted.

STATEMENT OF THE CASE

On July 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. He answered the SOR on July 28, 2007, admitting all of the allegations, and requested a hearing.

The case was assigned to me on September 26, 2007. On October 1, 2007, DOHA issued a notice of hearing scheduling it for October 25, 2007. During the hearing, I received eight government exhibits, 19 Applicant exhibits, and Applicant's testimony. DOHA received the transcript on November 2, 2007.

At Applicant's request, I left the record open for him to submit additional exhibits. Within the time allotted, he submitted 24 additional exhibits that I incorporated into the record.

FINDINGS OF FACT

_____The SOR admissions are included in the findings of fact. In addition, I make the following findings of fact.

Applicant is a 52-year-old married man with three adult children, two of whom are independent. He continues to care for one son who is developmentally disabled. For the past 13 years, he has worked in the field of submarine maintenance as an electrical designer instructor. His employer awarded him with a certificate of appreciation in August 2007.¹ He attended college in the 1970s, working toward a major in industrial technology, but did not graduate.²

Over the years, Applicant has struggled with job instability and family-related misfortune, beginning in July 1987, when he was laid off.³ Shortly thereafter, he grew unable to pay his debts, and filed for Chapter 13 bankruptcy protection.⁴ He failed to adhere to the court-ordered payment plan, leading to the dismissal of the petition in November 1987.⁵

Three months later, in February 1988, Applicant filed for Chapter 7 bankruptcy protection.⁶ In July 1988, approximately \$65,000 of debt was discharged. His home was foreclosed through the bankruptcy.

¹Exhibit M.

²Tr. 34.

³Exhibit DD, Letter from Ex-Employer, dated August 12, 1987.

⁴Exhibit W, Bankruptcy Record, dated July 15, 1987.

⁵Tr. 56.

⁶Exhibit X, Bankruptcy Record, dated February 10, 1988.

In April 1988, Applicant obtained another job.⁷ In July 1988, he was laid off.⁸

In December 1989, Applicant again filed for Chapter 13 bankruptcy protection.⁹ In 1990, he began making payments through the bankruptcy plan. By this time, he had gotten another job. In approximately 1992, he was again laid off.¹⁰ Subsequently, he did not complete the payment plan, and in 1994, the bankruptcy was dismissed.¹¹ He had satisfied \$9,120 of debt through the plan at the time of its dismissal.¹² As a result of the bankruptcy dismissal, he lost his home to foreclosure.¹³

Applicant's employment situation stabilized when he began working for his current employer in 1995. As his employment situation improved, his finances improved.

Applicant's financial problems recurred in May 2001 when he bought a home which, unbeknownst to him at the time of purchase, contained multiple defects, and required costly repairs.¹⁴ Also, his wife was laid off shortly after they purchased it. They were dependent on both incomes to make ends meet.

In December 2001, Applicant began missing mortgage payments. In March 2002, he filed for Chapter 13 bankruptcy protection. It was dismissed two months later after he missed the deadline to file a bankruptcy payment plan.¹⁵ Later that year, his home was foreclosed upon.¹⁶

In December 2004, Applicant purchased another house.¹⁷ By then, he and his wife had been employed without interruption for approximately a year. In December 2005, however, his wife was laid off.¹⁸ Also, her health began to deteriorate, requiring multiple surgeries and hospitalizations.¹⁹ She has not worked since the 2005 layoff.

⁷Exhibit B, Resume, dated August 6, 2007.

⁸Tr. 59.

⁹Answer, at 3.

¹⁰Tr. 98.

¹¹Answer at 3.

¹²Summary of Trustee's Final Account, dated December 7, 1994, as included in Exhibit HH at 4. There is no record evidence of how much debt Applicant was supposed to satisfy through the bankruptcy plan.

¹³Exhibit 2 at 3.

¹⁴Tr. 61; Exhibit Z at 2.

¹⁵Exhibit 5, Court Order, dated May 20, 2002.

¹⁶Tr. 89.

¹⁷Tr. 90.

¹⁸Tr. 38.

¹⁹Exhibit QQ, Various Medical Invoices.

Between February 2005 and June 2006, Applicant's father, father-in-law, and uncle died. He paid \$16,000 in burial and estate-closing expenses.²⁰ During this time, Applicant began to fall behind on his mortgage payments. In November 2006, he wrote the mortgagor detailing his misfortune, and requesting to arrange a payment plan.²¹ Receiving no response, he wrote again in January 2007.²² Later that month, he wrote \$3,600 of checks, using money withdrawn from a retirement account, to the mortgagor.²³ It did not accept them, and instead, initiated foreclosure proceedings.

In March 2007, Applicant retained an attorney who contacted the mortgagor with another settlement proposal.²⁴ The mortgagor rejected it, and continued with foreclosure proceedings. In October 2007, the foreclosure process was completed, and Applicant lost his home.²⁵

Currently, Applicant has approximately \$8,800 of delinquent debt, including \$1,775 in medical bills (SOR subparagraphs 1.a through 1.d), \$4,540 of credit card delinquencies (SOR subparagraphs 1.e, 1.g, and 1.i), and \$2,900 in utility bills (SOR subparagraphs 1.f and 1.h). SOR subparagraph 1.j lists \$6,400 in debt owed to the mortgagor as of June 2007. This debt was satisfied after the mortgagor resold his home after the foreclosure and applied part of the profit toward its satisfaction.

Applicant has been receiving financial counseling since April 2007.²⁶ In July 2007, with the help of the counselor, he developed a payment plan and a budget.²⁷ Under the plan, he will make monthly payments of \$350 to \$375 per month for three years. He made the first payment in October 2007.²⁸

SOR subparagraphs 1.a, 1.e, and 1.g through 1.i are included in the payment plan. Applicant is aware that he has some delinquent indebtedness stemming from his wife's extensive medical treatment. He could not, however, identify the ones alleged SOR subparagraphs 1.b through 1.d. The SOR identifies the debts as medical accounts without specifying any creditors. Applicant satisfied SOR subparagraph 1.f.²⁹

²⁰Tr. 40.

²¹Exhibit H.

²²Exhibit I.

²³Exhibit K.

²⁴Exhibit 6.

²⁵Tr. 70.

²⁶Exhibit O.

²⁷Exhibit N.

²⁸Exhibit O.

²⁹Tr. 49.

In October 2007, Applicant obtained a part-time job.³⁰ He did so to offset a salary decrease he incurred when his primary employer eliminated overtime.³¹ His net income from his primary employer is approximately \$1,200 per month.³² He will earn an additional \$640 per month on his part-time job.³³

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."³⁴ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Financial Considerations

³⁰Exhibits S, Tr. 64.

³¹Tr. 93, Answer at 1.

³²Exhibit A at 1-2.

³³Exhibit S; Tr. 69.

³⁴*See generally*, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

“Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.” In addition, individuals who are financially overextended, are “at risk of having to engage in illegal acts to generate funds.” Here, Applicant’s recurrent financial problems trigger the application of Financial Considerations Disqualifying Conditions (FC DC) 19(a), “inability or unwillingness to satisfy debts,” FC DC 19(c), “a history of not meeting financial obligations,” and FC DC 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.”

Applicant’s financial problems were not caused by irresponsible spending or bad judgment. Instead, they were caused by repeated layoffs and family crises, including, among other things, his wife’s serious illnesses, and the expenses associated with the death of three close family relatives in a 16-month span. Between 1995 and 2001, when these problems temporarily ebbed, Applicant’s finances were stable.

Applicant’s efforts at confronting his financial problems as they arose were not always successful. However, he dealt with them each time in an organized and responsible manner. Financial Considerations Mitigating Condition (FC MC) 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances,” applies.

Within the past seven months, Applicant has entered financial counseling, developed a budget, and organized a payment plan. When his work-hours were reduced, he obtained a part-time job to offset the income loss. He has ample income to adhere to the payment plan. FC MC 20(c), “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” and FC MC 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

All of the remaining delinquencies except three medical bills listed in SOR subparagraphs 1.b through 1.d are included in the payment plan. Although Applicant was unable to locate the creditors, I conclude their existence does not create a security concern. In reaching this conclusion, I was particularly cognizant of the fact that the SOR referred to the delinquencies as “medical accounts” without giving Applicant notice of the identity of any of the respective creditors. Upon weighing the applicable disqualifying and mitigating conditions, I conclude Applicant has mitigated the financial considerations security concern.

Whole Person Concept

The nature, extent, and seriousness of Applicant’s financial difficulties is significant. Specifically, he has filed for bankruptcy protection four times, and lost three homes to foreclosure in the past 20 years. These problems recurred frequently, and he has only recently been able to get them under control. Conversely, all of his financial problems were caused by an extraordinary series of professional and personal misfortunes during the same time period. Between 1995 and 2001, when these problems subsided, he had no corresponding financial problems.

Applicant has methodically begun rehabilitating his finances by entering financial counseling, preparing a budget, and generating additional income through a part-time job. Similar efforts have not always been successful in the past. I conclude, however, that the efforts at rehabilitation in tandem with the cause of the financial problems outweigh the risk of recurrence. Evaluating this case in the context of the whole person concept, I conclude Applicant has mitigated the security concern. Clearance is granted.

FORMAL FINDINGS

Paragraph 1 – Guideline F: FOR APPLICANT

Subparagraph 1.a - 1.s: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Marc E. Curry
Administrative Judge